



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202 - 2733

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Ms. L'Oreal Stepney, P.E.  
Deputy Director  
Office of Water (MC-122)  
Texas Commission on Environmental Quality (TCEQ)  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Variance extension for City of Clute, TPDES Permit No. 10044-001 (NPDES TX0034436)

Dear Ms. Stepney:

This is in response to the Texas Commission on Environmental Quality's (TCEQ) letter dated December 21, 2017, which requested an extension of the temporary variance to the *Texas Surface Water Quality Standards* (TSWQS). The variance applies to the dissolved oxygen criteria for Flag Lake Drainage Canal, an unclassified, perennial water body in segment 1111 - Old Brazos River Channel Tidal of the San Jacinto-Brazos Coastal Basin. The Environmental Protection Agency (EPA) has completed its review of this request which was submitted for review and approval, as required by 40 CFR 131.20.

The City of Clute (TPDES # 10044-001) discharges treated domestic wastewater via outfall 001 to a drainage ditch; thence to the Flag Lake Drainage Canal; thence to East Union Bayou; thence to the Intracoastal Waterway; thence to the Old Brazos River Channel Tidal in Brazoria County. Flag Lake Drainage Canal is an unclassified, perennial water body with a presumed high aquatic life use (TSWQS §307.4(h)(3)). The dissolved oxygen criteria to support a high quality life use include a 24-hour mean value of 5.0 mg/L and an 8-hour minimum value (within 24-hours) of 3.0 mg/L.

In the 2014 TSWQS, TCEQ adopted revised dissolved oxygen criteria for Flag Lake Drainage Canal, based on a use attainability analysis. The proposed dissolved oxygen criteria of 4.0 mg/L (24-hour mean) and 3.0 mg/L (24-hour minimum) are under review by EPA. The temporary variance allows the TPDES permit to be issued, while EPA completes review of the revised standards. The proposed permit for the City of Clute contains the variance extension for dissolved oxygen water quality standards. During the three-year variance extension, the permittee will be required to meet water quality-based limits for carbonaceous biochemical oxygen demand, total suspended solids, and ammonia, as issued in previous permits. If the revised standards for Flag Lake Drainage Canal are not approved by EPA, effluent limitations based on the current dissolved oxygen criteria for the high aquatic life use will become effective in the next permit.

Section 7 of the Endangered Species Act states that "all Federal agencies shall...utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered and threatened species" and "each Federal agency shall insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or


threatened species." EPA has determined that approval of an extension of the temporary variance to the dissolved oxygen criteria in Flag Lake Drainage Canal will have no effect on federally-listed threatened and endangered species.

The State Attorney General has previously certified that the variance provision in the TSWQS was duly adopted pursuant to State law. Public participation on the variance extension was completed through the comment period on the proposed permit. The federal regulation for public participation (40 CFR 25.5(b)) states that public notification must occur 45 days prior to the date of a hearing. It also states that the notification period may be reduced to 30 days when EPA determines that there are no complex or controversial matters to be addressed. EPA has decided that the 30-day notification period is sufficient for this variance request, as the temporary change to standards only applies to one specific water body. TCEQ received no comments on the variance extension or on the proposed permit.

EPA considers the issuance of the variance extension, in conjunction with the public participation process completed by TCEQ, to be consistent with and satisfy, the procedural requirements of 40 CFR131.20. EPA is approving the variance extension identified above, pursuant to section 303(c) of the Clean Water Act and the implementing regulations at 40 CFR part 131.

If you or your staff have any questions in this matter, please call me at (214) 665-7101 or contact Diane Evans of my staff at (214) 665-6677.

Sincerely,

  
for David F. Garcia, P.E.  
Acting Director  
Water Division

cc: Sonia Bhuiya, TCEQ - Wastewater Permits Section (MC-148)  
Joe Martin, TCEQ - Standards Group (MC-234)